IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 133 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MALA @ MOTA CHHAGAN CHARAN

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioners

MR SP DAVE APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 02/05/2001

ORAL JUDGEMENT

1. Rule. Mr. S.P. Dave, learned APP appears for State of Gujarat i.e. for respondent and waives service of Rule. By consent of learned advocates of both the sides, matter is being finally heard.

2. The present petitioners are the accused before learned Additional Sessions Judge in Sessions Case No. 4/89, facing charge for the offences punishable under Sections 302, 147, 148, 149, 324, 323 of Indian Penal Code. They have submitted an application at Ex. 13 before Trial Court stating that though, the petitioners have been facing a trial for a very long time since 1989, no progress whatsoever has been made and no witness has been examined and therefore, in view of the guidelines issued by Hon'ble Apex Court in case of RAJ DEO SHARMA VS. STATE OF BIHAR, reported in (1998) 7 SCC 507, the present petitioners be acquitted out right from aforesaid offences.

3. Trial Court after hearing learned advocates for the parties, dismissed the said application of petitioners vide order dated 30th November, 2000.

4. The Trial Court has considered certain aspects of the case for dismissing the said application of the present petitioners. It can be narrated as follows :-

(i) There were in all 26 accused and they did not use to remain present in Court between 1989 and 1993.

(ii) Charge was framed on 23rd April, 1993, since all the accused remained present in the Court on that day.

(iii) On and from 5.5.1993 one or the other accused remained absent and applied for exemption from personal attendance between 5.5.1993 and 6.6.1994.

(iv) That there are in all 14 such applications for exemption.

(v) That considering the period between 23rd April, 1993 and 6.6.1994, there was a passage of about 14 months.

(vi) That during this period, the prosecution does not appear to have brought any witnesses.

(vii) That a cross sessions case being Session Case No. 67/94 is also pending before the Court and the accused of that Sessions Case appear to be the witnesses in the present Sessions Case and vice versa.

(viii) That from the above position, it can be reasonably inferred that because of the absence of the accused, trial had not proceeded ahead in Sessions Case No. 67/94.

(ix) The accused were on bail and therefore, they did not appear to be in a hurry and no request appears to have been made by them to expediate the trial.

(x) On 6.6.1994, the Court appears to be busy and therefore, it appears to have placed the case on a been sine-a-die list.

(xi) The next date appears to have been on 28.6.1999 and summons were issued for appearance to the accused persons, requiring them to remain present before Court on 16.7.1999

(xii) On 16.7.1999, the accused appear to have remained present.

(xiii) But thereafter, some accused persons appear to have been remaining absent. Even, thereafter, they appear to have made request for exempting them from personal attendance.

(xiv) Out of 26 accused persons named in the chargesheet and charge, accused Nos. 2, 4 and 15 appear to have died at different point of time.

(xv) The prosecution appears to have applied for time for submitting death certificate in respect of those three dead accused, since confirmation as to the fact of death was necessary.

(xvi) The Court has also not passed a formal order of abatement against those three deceased accused persons and for that purpose, arguments were still to be heard.

(xvii) That therefore, considering the period from 26.7.1999, the period of three years as per the requirement of the aforesaid case of the Hon'ble Supreme Court has not passed and therefore, the accused could not be discharged or acquitted.

5. Learned advocate for petitioners has submitted certified copy of proceedings before Trial Court, which shows that, there are certain dates given by learned Chief Judicial Magistrate, Jamnagar. Then on the next

page, there is a reference to the proceeding of Sessions Case No. 4/98 begining from 18.1.2001. However, there does not appear to have been any proceeding between 1.9.1989 and December, 2000.

6. However, as said above, learned Additional Sessions Judge has given certain dates referred to hereinabove. On one hand, the proceedings did not show anything between 1.9.1989 and December, 2000 and on the other hand, some details have been given by learned Additional Sessions Judge in his order in question. It is not clear, as to on what basis, learned Additional Sessions Judge has made observations with respect to non appearance of different accused persons on different dates between 1.9.1989 and December, 2000. In above view of the matter, it is not possible for this Court to appreciate the real factual aspect. As said above, there is no version on record, which is likely to tell us the actual position. In above view of the matter, the proper way would be to remand the matter back to the Sessions Court at Jamnagar for fresh hearing and fresh orders on merit with a view to see that the above confusion does not remain on record.

7. In above view of the matter, this Criminal Revision Application is partly allowed and judgement and order recorded by learned Additional Sessions Judge dated 30th November, 2000, dismissing the application Ex. 13 of the petitioners, who are accused in Sessions Case No. 4/89, is quashed and set aside and matter is remanded back to Sessions Court, Jamnagar for fresh hearing and disposal of the said application on merit afresh with a direction to keep in mind the aforesaid facts and circumstances of the case and concerned Sessions Judge will also see that there is no confusion apparent on the face of record. The learned Additional Sessions Judge will naturally and necessarily consider the case of common cause and Raj Deo Sharma in order to arrive at the correct decision. Rule made absolute to that extent.

(D.P. Buch, J.)

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